IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 603/2004

M/s UNIQUE ORGANICS LTD. Vs. STATE OF RAJASTHAN & ANR.

DATE: 06.12.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. A.K. Bajpai for the petitioner.
Mr. Pradeep Shrimal for the respondents.

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REPORTABLE

Brief facts of the case are that auction of the industrial plot No. E-522 measuring 49.7x62 mtrs. Situated at Sitapura Industrial Area, Jaipur took place on 20.03.1997. The petitioner also participated in the auction proceedings and his bid was accepted being highest on 29.03.97 and the petitioner deposited 25% of the cost of the plot on 10.04.97.

On 30.05.97, on the ground of delay on the part of the RIICO in hading over the possession to the petitioner company, the petitioner informed the RIICO that the company is no more interested in purchasing the plot, but the respondents have not accepted the surrender of the plot and have forfeited 25% of the cost which has been deposited by the petitioner and cancelled the allotment vide order dated 14.08.97.

[2]

The main contention of the petitioner is that instead of cancelling the said allotment of plot, it should be considered as surrender by the petitioner, as informed vide Annexure-7 dated 30.05.97. As the petitioner company was not at all interested to purchase the plot and surrender the same, the respondents could only forfeit the amount as per Rule 18(6) (**Surrender/Cancellation of Plots)** of the RIICO Disposal of Land Rules, 1979 (for short 'the Rules of 1979'), according to which, if any allottee or a lessee intends to surrender a plot or part thereof for any reason, the corporation may accept it on the c ondition as it may deem fit. In such cases of surrender of plots or on cancellation of plot the amount of development charges recovered from the party will be refunded. However, the amount of security money, economic rent, service charges and interest on unpaid economic rent and service charges shall be deducted while refunding the amount.

Here in the instant case, RIICO has cancelled the plot allotted in favour of the petitioner company as the petitioner failed to execute lease.

Learned counsel for the petitioner submits that for cancellation, the respondents ought to have

follow the procedure as laid down in Rule 24 of the Rules of 1979. As per Rule 24, the Corporation shall have the right to cancel the allotment after issuing a 30 days show cause notice to the allottee by the concerned Senior Regional Manager/Regional Manager for any breach of any of these rules, condition of allotment letter and terms of lease agreement.

Thus, the respondents ought to have issue 30 days show cause notice which has not been issued, therefore, the order of cancellation of plot is contrary to the provisions of Rule 24 of the Rules of 1979.

Per contra, learned counsel appearing for the respondent RIICO submits that the present writ petition has been filed by the petitioner company after an inordinate delay as the allotment of plot in question has already been cancelled in the year 1997 whereas this writ petition is filed in the 2004. He further submits that vide Annexure-7, the petitioner company has stated that “Because of failure on the part of RIICO give possession of the land, we are no more interested in the above plot which please note.”, which is contrary to the fact. The RIICO repeatedly requested the petitioner company to complete the formalities and

execute lease and also issued several letters to the petitioner company in this regard, but the petitioner failed to deposit the remaining 75% of the amount. It is also contended that the petitioner has breached the terms and conditions of the auction of industrial plot situated in Sitapura Industrial Area, Jaipur, more particularly clause-7 of the conditions. As the petitioner failed to deposit 75% of the balance amount, it was made clear that the plot which was auctioned in favour of the petitioner shall be cancelled and amount will be refunded after deduction of 25% amount of bid.

Learned counsel for the respondents also referred Annexure-8, the letter dated 06.06.97 issued to the petitioner, wherein the petitioner was called upon to execute necessary legal documents and called upon to make the payment of the balance 75% sale consideration amount of the plot latest by 27.06.97, failing which action as per Clause 3(iii) of sale approval letter dated 29.03.97 shall be taken.

Since the petitioner failed to deposit the balance 75% sale consideration amount by 27.06.07, the respondents have no option other than to initiate action as per conditions stipulated in two letters and as per clause-7 of the terms and conditions of open

auction.

It is also contended on behalf of the respondents that the petitioner has got alternative efficacious remedy of civil suit for recovery/refund of money, as held by this Court in the case of **M/s Marudhara Conductors & Anr. Vs. Haryana State Electricity Board & Anr., 1998(2) RLR 423.**

I have heard rival submissions of the respective parties and carefully perused the documents annexed with the writ petition and gone through the relevant rules and auction and sale conditions.

As per Rule 18(6) of the Rules of 1979, any allottee or lessee if intends to surrender a plot or part thereof for any reason, upon such eventuality, corporation may accept it on the condition as it may deem fit.

The petitioner tried to make out a case that as per Annexure-7 dated 30.05.97, as the allottee petitioner company expressed its intention to surrender the plot in question, the same should be considered as surrender and under the terms of Rule 18(6) of the Rules of 1979, after deducting the amount of security money, economic rent, service charges and interest on unpaid economic rent and service charges, other amount

required to be refunded back to the petitioner.

Upon perusal of the language written by the petitioner company that “petitioner company is no more interested in purchasing the plot in question because of failure on the part of RIICO”, the respondent RIICO has controverted this fact and alleged that failure was on part of the petitioner and not on the part of RIICO and the word “no more interested” cannot be considered as surrender. As per Rule 18(6) of the Rules of 1979, allottee or lessee should show his intention to surrender the plot mentioning the reasons.

So far as compliance of mandatory provisions of Rule 24 of the Rules of 1979 is concerned, wherein the Corporation has been given right to cancel the allotment after issuing 30 days show cause notice to the allottee, even on the breach of terms of lease agreement and breach of rules and conditions of allotment letter.

In the instant case, no lease agreement has been executed, therefore, on behalf of the respondent RIICO, it is submitted that the petitioner was called upon by way of notice dated 06.06.97 to deposit the balance 75% sale consideration amount of the plot by 27.06.97, failing which action as per clause 3(iii) of

sale approval letter dated 29.03.97 shall be taken against the petitioner.

Since the petitioner failed to deposit the balance amount, the allotment of shop in question has been cancelled by the respondents vide order impugned dated 14.08.97 (Annexure-11). The show cause notice was issued to the petitioner on 06.06.97 and considering sub-clause (iii) of Condition No.3 of sale approval letter dated 29.03.97 and the letters dated 07.05.97, 06.06.97 and 19.06.97 vide which the petitioner was advised to make compliance of the terms and conditions of sale approval letter dated 29.03.97.

The petitioner has utterly failed to deposit the balance 75% amount of sale consideration of Rs. 17,10,545/- within the stipulated time period, therefore, the respondent RIICO has cancelled the sale of part land measuring 3081.4 Sq. Mtr. of plot No. E-522, Sitapura Industrial Area, Tonk Road, Jaipur and forfeited the amount of Rs. 4,27,636.25 by invoking condition No. 3(iii) of sale approval letter dated 29.03.97. Thus, compliance of Rule 24 of the Rules of 1979 has also been made by the respondent RIICO.

In the considered view of this Court and as observed herein above, this Court do not find any merit

in the instant writ petition, which, of course, has been filed after a delay of 7 years.

Consequently, the writ petition fails having no merit and the same is hereby dismissed with no order as to costs.

(K.S. RATHORE),J.

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